

Congress of the United States
Washington, DC 20515

March 12, 2009

Dr. Robert M. Gates
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Dear Secretary Gates:

We are acutely aware that the US Transportation Command and the US Air Force place a very high priority on recapitalizing the fleet of KC-135 Refueling Tankers. We agree with this priority. Unfortunately, as the Government Accountability Office concluded last year, the previous source selection process for the KC-X Tanker was deeply flawed. We write to you today to highlight several key points that we believe must guide a future source selection process if it is to be successful.

First and foremost a future competitive source selection must be fair to all parties while delivering the best value solution for the warfighter at a reasonable cost for the taxpayer. In the previous source selection, the competition was not conducted fairly on several levels. The Department of Defense (DOD) must not repeat past mistakes:

➤ Do not allow “competition at all costs” to distort the KC-X solicitation and source selection process. In the months leading up to the release of the final Request for Proposals (RFP) for the previous KC-X solicitation, the Air Force bent to the combination of external pressure for “competition at all costs” coupled with refusal by one potential offeror to compete unless the RFP was changed to its satisfaction. This led to last minute changes in key elements of the Combined Mating and Ranging Planning System (CMARPS) evaluation tool for the sole purpose of qualifying one offeror’s proposal.

➤ Conduct the competition on a level playing field for all parties. In the previous KC-X competition, the Northrop Grumman/EADS team benefited from unfair advantages that derive from illegal government subsidies and waivers of regulations that apply to products produced in the United States. Specifically, the United States government has a complaint pending before the World Trade Organization (WTO) stating that the A-330 aircraft produced by EADS/Airbus benefitted from \$5 billion in illegal government subsidies. Note that Section 886 of the FY2009 National Defense Authorization Act requires DOD to conduct a review of the impacts of subsidies on the aerial refueling tanker competition upon completion of the proceedings of the WTO. The KC-X competition also has highlighted the unequal treatment that American producers face when competing with products from several allied nations. Our American producers must abide by many regulations (Berry Amendment, Buy America Act, International Traffic in Arms Regulations, Foreign Corrupt Practices Act, and cost accounting

standards) that add cost for domestic products but are waived for items produced in other countries.

➤ Take into account full and accurate life-cycle costs for proposals. According to Defense Acquisition University studies, Operation and Support (O&S) costs constitute approximately 72 percent of total weapon system costs. It is imperative that these costs be a significant factor in source selection decisions, and that they be estimated properly. DOD made a serious error in the previous KC-X Tanker source selection analysis when it based estimates of Most Probable Life-Cycle Cost (MPLCC) on a 25-year interval rather than the 40-year interval that was stipulated (and approved by the JROC) as the required service life of the aircraft. Furthermore, GAO recommended that a future source selection give greater attention to the impact of fuel costs in its life-cycle cost analysis. GAO concluded that “even a small increase in the amount of fuel that is burned per hour by a particular aircraft would have a dramatic impact on the overall fuel costs.” Well established commercial data shows that the Airbus A-330 aircraft consumes 24% more fuel per flight hour than does a Boeing 767 aircraft. This would result in very significant differences in operating costs.

➤ Insist that proposals fully comply with all key requirements of the solicitation. In the previous KC-X Tanker source selection evaluation, GAO concluded that in two instances the Air Force disregarded the fact that the Northrop Grumman/EADS proposal failed to comply with requirements of the solicitation. Specifically, GAO found that the Air Force “improperly made award” when it “unreasonably determined that the awardee’s refusal to agree to the specific solicitation requirement that it plan and support the agency to achieve organic depot-level maintenance.” GAO also concluded that “the record does not demonstrate the reasonableness of the agency’s determination that the awardee’s proposed aerial refueling tanker could refuel all current Air Force fixed-wing tanker-compatible receiver aircraft in accordance with current Air Force procedures, as required by the solicitation.”

➤ Insist that source selection evaluation be accomplished in accordance with the evaluation plan that is established for the solicitation. GAO found that the Air Force “did not assess the relative merits of the proposals in accordance with the evaluation criteria identified in the solicitation, which provided for a relative order of importance for the various technical requirements, and where the agency did not take into account the fact that one of the proposals offered to satisfy more “trade space” technical requirements than the other proposal, even though the solicitation expressly requested offerors to satisfy as many of these technical requirements as possible.” Furthermore, GAO concluded that the Air Force “violated the solicitation’s evaluation provision that “no consideration will be provided for exceeding [key performance parameter] KPP objectives” when it recognized as a key discriminator the fact that the awardee proposed to exceed a KPP objective relating to aerial refueling to a greater degree than the protester.”

➤ Carefully consider national security impacts and industrial base impacts. Given the crucial role that air refueling plays in providing global reach for our military, DOD must carefully weigh the importance of preserving domestic design knowledge and production expertise. Furthermore, industrial base impacts must be assessed given the fragile economic conditions and weak domestic employment environment. Federal code

(10 U.S.C. 2440) requires evaluation of technology and industrial base impacts in conjunction with major defense acquisitions.

We also think that it is important to the successful progress of the KC-X Tanker acquisition that DOD commence discussions with the potential offerors. Our understanding is that for the last several months DOD has resisted discussions that would help the government and industry exchange information, ideas and perspectives. If this program is to move forward and yield a positive outcome, we recommend that DOD engage with industry.

Finally, we urge you to take the necessary time to allow the new Administration team to thoroughly consider the framework for the next source selection process. As much as the Air Force needs to begin recapitalizing the KC-135 fleet, we think it is essential that the solicitation requirements and acquisition strategy have the input and support of the new DOD leadership team that will be responsible for conducting the source selection and getting the program under way.

Thank you for your attention.

Sincerely,



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Member of Congress



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Member of Congress